

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBERS: 03-0084
Gross Retail and Use Taxes
For 2001

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ISSUE

I. Gross Retail and Use Taxes—Tractor

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-7; 45 IAC 15-5-3(8); 45 IAC 2.2-2-1; 45 IAC 2.2-3-4

Taxpayers protest the proposed assessment of Indiana use tax on the purchase of a John Deere tractor, which they returned to the dealer approximately three months after purchase. They received back all but \$250.00 of the purchase price.

STATEMENT OF FACTS

Taxpayers own two adjacent parcels of land totaling approximately 200-plus acres. The family home and taxpayers' operated convenience store are located on the land; taxpayers farm the remainder. A use tax issue arose during the audit when the auditor declined to accept the evidence supplied showing that taxpayers had returned a John Deere tractor to the dealership approximately three months after purchase, and received all but \$250.00 back in a refund. Additional facts will be added as necessary.

I. Gross Retail and Use Taxes—Tractor

DISCUSSION

Pursuant to IC § 6-8.1-5-1(b) and 45 IAC 15-5-3(8), a "notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the assessment is made."

Pursuant to IC § 6-2.5-2-1, a "person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state." *See also*, 45 IAC 2.2-2-1. Pursuant to IC

§§ 6-2.5-3-1 through 6-2.5-3-7, an “excise tax, known as the use tax, if imposed on the storage, use, or consumption of tangible personal property in Indiana is the property was acquired in a retail transaction.” An exemption is provided in IC § 6-2.5-3-4 if “the property was acquired in a retail transaction and the state gross retail tax” was paid at the time of purchase. Taxpayers are personally liable for the tax. (IC § 6-2.5-3-6). IC § 6-2.5-3-7 provides that a “person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana;” therefore, the presumption of taxability exists until rebutted. *See also*, 45 IAC 2.2-3-4.

The Department has revisited the use tax assessment on a John Deere tractor taxpayer returned to the dealership approximately three months after purchase, where taxpayer received all but \$250.00 in a refund. The auditor decided the evidence was insufficient, especially because taxpayers did not receive a full refund. However, since a companion Letter of Findings has concluded that taxpayers agricultural activities entitled them to deduct losses because they were engaged in the business of farming, any use of the tractor for taxpayers’ farming activities would render the purchase and use of the tractor exempt. There is nothing in the file to indicate the tractor was used for any other purposes. It is immaterial that taxpayers received less than a full refund for the tractor’s return to the seller.

FINDING

Taxpayers’ protest concerning the imposition of additional use tax for a tractor returned to the dealer is granted.